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PUBLIC SERVICE
COMMISSION

Via Hand Delivery

Beth O'Donnell, Executive Director
Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
Frankfort, Kentucky 40602

RE: *Saeid Shafizadeh v. Cingular Wireless-Kentucky*, PSC Case No. 2003-00400

Dear Ms. O'Donnell,

On May 28, 2004, the Complainant in the above-referenced proceeding submitted a document to the Commission captioned "Complainant's Response to the Memorandum of the Informal Conference." This document purports to contain the Complainant's comments on the Commission's *draft* informal conference memorandum. In any event, while the Commission's original request for comments on the draft memorandum did not provide for responses to another party's comments, the nature of, context of, and assumptions contained in the Complainant's comments require Cingular Wireless-Kentucky, by counsel, to submit the following response and strenuous objection to the inclusion of those comments in the final version of the memorandum.

Primarily, Cingular objects to the fact that the Complainant's comments appear to be an impermissible attempt to ascribe probative value to comments made at an informal conference – the purpose of which was to attempt to reach a resolution in this matter. Cingular would also like to emphasize the fact that it requested the informal conference because the *material* facts of this case are admitted and are not in dispute. Thus, Cingular participated in the informal conference in the spirit of its purposes and in an attempt to narrow the issues before the Commission. Cingular objects to any connotation of its participation to the contrary. Certainly, the purpose of the informal conference was not to present evidence or witnesses in lieu of a formal hearing. Cingular further provides specific responses to the Complainant's comments as follows:

First, with regard to paragraph one, Cingular agrees that while Ms. Ginny Smith was not present from the start of the informal conference, she did make an appearance approximately half way into the proceedings. Cingular, however, does not believe that the Complainant's comments concerning Ms. Smith's "unsuccessful efforts" to assist the Complainant accurately reflect Ms. Smith's contribution to the conference. While Cingular is willing to rely on the Commission's record of the proceeding in this regard, Cingular does not agree that this issue is material and must be rectified in the final memorandum.

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Generally with regard to Complainant's paragraphs two, three, and four, Cingular disputes and objects to (1) any implication or characterization of its representatives at the informal conference, either Errol Phipps (in-house counsel for Cingular) or Jason Parrish, as persons qualified to provide definitive information concerning Cingular's billing processes or (2) any implication that their inability to respond to certain inquiries is in any way probative of any of the issues in this case. Mr. Parrish and Mr. Phipps attended the conference solely for its purpose – facilitating a resolution to this matter – and were present with the authority to do so. The Complainant's extremely specific comments concerning their participation in the conference do not merit inclusion in a simple memorandum and record of the general result of the proceedings.

Specifically with regard to the comments concerning Mr. Parrish in paragraph two, Mr. Parrish provided the Commission with information on the general treatment of misapplied payments, which contribution was correctly described in the Commission's draft memorandum. Mr. Parrish was not presented as and never purported to be familiar with or an expert on Cingular's payment processing centers. Therefore, Cingular objects to Complainant's characterization that Mr. Parrish's lack of knowledge on that subject is in any way relevant or sufficiently material to be included in the final memorandum.

In paragraph three, the Complainant further misconstrues and includes irrelevant information concerning Mr. Phipps' participation in the informal conference. Primarily, Cingular generally disagrees with the Complainant's characterization of the questions and answers attributed to Mr. Phipps. Mr. Phipps admitted that he was not an expert on certain matters he was questioned about. The Complainant, however, impermissibly construes that admission as probative of the issues raised by those questions. With regard to the more specific, alphabetized comments set forth by the Complainant, in corresponding order:

- a. At the conference, Mr. Phipps was only questioned concerning Cingular's existing, not future, billing safeguards. Cingular objects to any connotation in Complainant's comment that a determination has been made that Cingular needs any such, or additional, safeguards.
- b. Mr. Phipps does not recall any question addressing employee training on accounting mistakes that was framed as indicated in the Complainant's response. To the extent that any such comment merits inclusion in the final memorandum, Cingular will defer to the Commission's record on this issue with the qualifications set forth above.
- c. Cingular objects to the inclusion of any statement in the memorandum that implies that Mr. Phipps' lack of knowledge concerning Cingular's check processing procedures is probative of the issues in this case or casts a negative light on either Cingular's or Mr. Phipps' participation in the informal conference. Again, Mr. Phipps never purported to be the person who could provide determinative information on Cingular's check processing procedures.



d. Cingular does not recall any comments being made with regard to Cingular's use of or blocking of numbers with the Caller ID service. To the extent that any such comment merits inclusion in the final memorandum, Cingular will defer to the Commission's record on this issue with the qualifications set forth above. In the event such topic is included, Cingular objects to the inclusion of any statement that alleges Cingular is taking proactive measures to block any numbers from Caller ID services. In addition, Cingular objects to the inclusion of comments that would indicate that taking such steps is in any way impermissible.

e. Finally, Cingular does not recall any comments being made with regard to the adequacy of Cingular's customer service staff. To the extent that any such comment merits inclusion in the final memorandum, Cingular will defer to the Commission's record on this issue with the qualifications set forth above.

With regard to paragraph four, Cingular again objects to the inclusion of any statements that imply Mr. Phipps' limited knowledge of Cingular's check processing procedures is probative of any issue in this matter or determinative of the substance of Cingular's processes or their appropriateness, validity, or compliance with Commission requirements.

With regard to paragraph five, the statement that Cingular had no explanation for its alleged "refusal to comply" with Ms. Smith's efforts to obtain Complainant's pay history is false. Cingular objects to the inclusion of any statement to that effect. In fact, Cingular advised Ms. Smith that Cingular's policy is not to give out any customer's billing or payment information to anyone other than the customer himself in the absence of express consent and authorization provided by the customer or a subpoena.

Finally, Cingular's representatives remember both Mr. Phipps and Ms. Naumann making the observation that this whole incident may have been resolved at an earlier point in time if the Complainant had provided Cingular's representatives with some sort of verification of his identity or conveyed proof of his payment via facsimile transmission to the customer service representative requesting it. Cingular emphatically concurs with the Commission's comments in the draft memorandum on this issue.

Cingular understands that what is at issue here is an informal conference memorandum, and that not all of the issues raised in either this letter or the Complainant's response will be incorporated into the final memorandum. Because the Complainant insists upon submitting comments that are outside the scope of such a memorandum and those comments will be of record in this proceeding, Cingular finds it necessary to provide the above response. Cingular appreciates the Commission's patience in this matter.

Very truly yours,

Mary Elisabeth Naumann

cc: Saeid Shafizadeh
Errol Phipps